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10/798,164	03/10/2004	Klaus Kwetkat	Muller-25-1	5119

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EXAMINER

DELCOTTO, GREGORY R

ART UNIT PAPER NUMBER

1751

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/798,164

Applicant(s)

KWETKAT ET AL.

Examiner

Gregory R. Del Cotto

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4, 6, 7, 9-13, 17, 19-27, 32-42, and 51 is/are pending in the application.
- 4a) Of the above claim(s) 19-22 and 24-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4, 6, 7, 9-13, 17, 23, 32-42 and 51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 09/831,796.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 2-4, 6, 7, 9-13, 17, 19-27, 32-42, and 51 are pending. Claims 1, 5, 8, 14-16, 18, 28-31, and 43-50 have been canceled. Applicant's amendments and arguments filed 9/14/06 have been entered.

Claims 19-22 and 24-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/27/05. Note that, instant claim 23 has been improperly labeled as "withdrawn" – this claim is not withdrawn but under examination.

### **Objections/Rejections Withdrawn**

The following objections/rejections as set forth in the Office action mailed 3/13/06 have been withdrawn:

The objection to claims 2-4, 6-14, 17, 23, 32-42, 49, and 50 because of informalities has been withdrawn.

The objection to claims 8-10, 17, 42, and 49 under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim, has been withdrawn.

The rejection of claims 2, 10, and 36 under 35 U.S.C. 102(a) as anticipated by DE 19855080 has been withdrawn.

The rejection of claims 2-4, 6-14, 17, 23, 32-42, 49, and 50 under 35 U.S.C. 102(a) as anticipated by DE 19622612 has been withdrawn.

**Priority**

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 09/831,796, filed on 8/13/01.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 23, this claim is dependent upon claim 50 which has been canceled. For purposes of examination, the Examiner has interpreted claim 23 to be dependent upon claims 2 or "51". Clarification is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3, 4, 6, 7, 9, 11-13, 17, 23, 32-35, 37-42, and 51 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 19855080. Note that, a translation of this document has been received.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

'080 teaches an active care ingredient in skin care and hair treatment agents is a mixture of a diacylalkenyldiaminodicarboxylic acid and an oil, fat, or wax. Note that, '080 teaches the same surfactants as recited by formula B.III of the instant claims. Suitable fatty acids include those having from 6 to 22 carbon atoms. Mixtures with fatty alcohols have particularly good care properties for purposes of the invention. Suitable fatty alcohols include alcohols having from 6 to 22 carbon atoms. See page 4, lines 1-30. Suitable nonionic surfactants include C12-C22 fatty acid mono and diesters of addition products of from 1 to 30 mole of ethylene oxide with glycerol, etc. See page 5, lines 1-30. Additionally, hair conditioning agents such as soy lecithin, etc. See page 10, lines 10-20. Additionally, the Examiner asserts that '080 would inherently disclose

compositions containing the same components in the same amounts having the same properties as recited by the instant claims. '080 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '080 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '080 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at compositions containing the claimed components in the claimed amounts in order to provide the optimum cleaning properties to the composition because '080 teaches that the amounts and types of required components added to the composition may be varied.

Claims 2-4, 6, 7, 9-13, 17, 23, 32-42, and 51 are rejected under 35 U.S.C. 103(a) as unpatentable over DE 19622612. Note that, a translation of this document has been received.

'612 teaches an active care ingredient in skin care and hair treatment agents is a mixture of a diacylalkenyldiaminodicarboxylic acid and an oil, fat, or wax. Note that, '080 teaches the same surfactants as recited by formula B.III of the instant claims. Additionally, the compositions may contain fatty acids having from 12 to 18 carbon atoms, fatty alcohols containing an alkyl radical having from 1 to 8 carbon atoms, etc. which assist in acylation. The fatty alcohols can be used in amounts from 20 to 50% by volume. See page 4, lines 20-25. The compositions may contain surfactants such as glycerol mono- and diesters and sorbitan mono-and diesters of saturated and

unsaturated fatty acids having from 6 to 22 carbon atoms and ethylene oxide addition products thereof, etc. See page 7, lines 1-30. Additionally, superfatting agents may be used including lecithin derivatives, etc. See page 8, lines 30-40.

'612 does not teach, with sufficient specificity, a surfactant composition containing a Gemini surfactant, two or more co-amphiphiles, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a surfactant composition containing a Gemini surfactant, two or more co-amphiphiles, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '612 suggest a surfactant composition containing a Gemini surfactant, two or more co-amphiphiles, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Claims 2, 10, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19855080.

'080 is relied upon as set forth above. However, '080 does not teach, with sufficient specificity, a composition containing the specific amount and number of co-amphiphiles in addition to the other requisite components of the composition as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing the specific amount and



number of co-amphiphiles in addition to the other requisite components of the composition as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '080 suggest a composition containing the specific amount and number of co-amphiphiles in addition to the other requisite components of the composition as recited by the instant claims.

### ***Response to Arguments***

With respect to '080, Applicant states that this rejection has been overcome since the reference was filed less than one year before the relevant priority date and was published after the priority date. Additionally, Applicant states that alkylglycosides as well as polyol ester are mentioned on page 8 as consistency regulators only and the nonionic surfactants are different from the co-amphiphiles claimed in claim 51. In response, note that, the Examiner maintains that '080 still qualifies as prior art under 35 USC 102(a) since Applicant has not perfected priority with a certified translation of the priority document. Thus, the publication date of 9/16/99 of '080 is prior to the 371 filing date of 9/13/00. Furthermore, the Examiner asserts that the triglycerides of fatty acids taught by '080 would fall under nonionic surfactants listed in instant claim 51 as well as the fatty alcohols and fatty acids as also taught by '080.

With respect to '612, Applicant states that while '612 does teach the use of polyol fatty acid esters, sugar esters, sorbitan esters, etc., the '612 references does not teach to use to amphiphiles as set forth in new claim 51. In response, note that, the Examiner maintains that '612 teaches nonionic surfactants which overlap with the nonionic surfactants recited by instant claim 51 and teach the use of fatty alcohols having from

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12 to 22 carbon atoms which are the same as the fatty alcohols recited by instant claim 51. Thus, the Examiner maintains that '612 teaches compositions containing 2 or more co-amphiphiles as recited by instant claim 51.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gregory R. Del Cotto  
Primary Examiner  
Art Unit 1751

GRD  
November 26, 2006